

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRINCETON DEVELOPMENTS, LLC,

Plaintiff,

v.

BRYNEE K. BAYLOR; BAYLOR &
JACKSON, PLLC; THE MILAN GROUP,
INC.; FRANK LORENZO; GPH
HOLDINGS, LLC; PATRICK LEWIS;
BRETT A. COOPER; DAWN R. JACKSON;
SUSAN C. KEVRA; MIA C.
BALDASSARI; ELMO BALDASSARI;
GLOBAL FUNDING SYSTEMS; and THE
LAW OFFICES OF SUSAN C. KEVRA,

Defendants.

No. C 11-4471 CW

ORDER GRANTING
DEFENDANT MIA
BALDASSARI'S
MOTION TO SET
ASIDE DEFAULT
(Docket No. 111)

Pro se Defendant Mia Baldassari moves to set aside the
default entered against her on October 3, 2012. Plaintiff
Princeton Developments, LLC opposes the motion. The Court takes
the motion under submission on the papers and GRANTS it.

BACKGROUND

On August 24, 2012, Baldassari was served with the summons
and complaint in the instant case. Docket No. 97.

On September 5, 2012, Baldassari mailed an answer to the
complaint in the instant case, along with an answer to the
complaint in a related case, Kuman Banque, LLC v. Baylor, Case No.
11-4472, to the Clerk of the Court for filing. Mot. to Set Aside
Default,¹ Docket No. 111, ¶ 3; Baldassari Reply Decl., Ex. 1

¹ Baldassari has attested to the truthfulness of the
statements made in her motion under penalty of perjury. Mot. to
Set Aside Default, 3.

(domestic return receipt from USPS, showing that delivery was made on September 10, 2012).² Baldassari also attests that she emailed a copy of both answers to Plaintiff's attorney on September 7, 2012. Mot. to Set Aside Default ¶ 4; Baldassari Reply Decl. ¶ 5. Baldassari's answer in the Kuman Banque case was received by the Court and filed on September 10, 2012. Docket No. 78 in Case No. 11-4472. However, no answer was received or filed in the instant case.

Baldassari further states that she received a copy of Plaintiff's motion for entry of default against her on October 4, 2012, three days after it was filed and the day after it was granted. Mot. to Set Aside Default ¶ 5; Baldassari Reply Decl. ¶ 6; see also Docket Nos. 98, 99. On October 8, 2012, she again emailed Plaintiff's counsel a copy of her answer in the instant case. Mot. to Set Aside Default ¶ 6; Baldassari Reply Decl. ¶ 7 & Ex. 2.

On October 15, 2012, Baldassari filed a motion to appear by telephone at the case management conferences scheduled for October 31, 2012 in both the instant action and the Kuman Banque case. Docket No. 100.

On October 29, 2012, the Court continued the case management conferences until January 23, 2013. Docket No. 108. At that time, the Court informed Baldassari that she was in default in this action and that, if she wished to defend the claims asserted

² Plaintiff has not objected to the new evidence that Baldassari submitted with her reply. See Civil Local Rule 7-3(d)(1) (providing that any objections to reply evidence must be filed and served not more than seven days after the filing of the reply).

1 against her in that case, she had to make a motion to set aside
2 the entry of default and show good cause to do so under Federal
3 Rule of Civil Procedure 55(c). The Court directed her to attach a
4 proposed answer to any such motion.

5 On November 1, 2012, Baldassari learned that default had been
6 entered against her and shortly thereafter contacted the Court's
7 courtroom deputy, who advised her that the Court had received her
8 answer in the Kuman Banque action and not in the instant case.
9 Mot. to Set Aside Default ¶¶ 8-9; Baldassari Reply Decl. ¶ 9-10.

10 On November 9, 2012, Baldassari filed the instant motion to
11 set aside the default and simultaneously filed her proposed
12 answer. Docket Nos. 111 and 112.

13 DISCUSSION

14 Federal Rule of Civil Procedure 55(c) provides that a court
15 "may set aside an entry of default for good cause." The district
16 court has discretion to determine whether a party demonstrates
17 "good cause." Madsen v. Bumb, 419 F.2d 4, 6 (9th Cir. 1969). The
18 court's discretion is particularly broad where a party seeks to
19 set aside an entry of default rather than a default judgment.
20 Mendoza v. Wight Vineyard Mgmt., 783 F.2d 941, 945 (9th Cir.
21 1986).

22 In evaluating whether a party has demonstrated good cause, a
23 district court may consider the following factors: (1) whether the
24 defendant's culpable conduct led to the default; (2) whether the
25 defendant has a meritorious defense; and (3) whether setting aside
26 the default would prejudice the plaintiff. TCI Group Life Ins.
27 Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001). Default
28 judgments are "ordinarily disfavored" because "[c]ases should be

1 decided upon their merits whenever reasonably possible." Eitel v.
2 McCool, 782 F.2d 1470, 1472 (9th Cir. 1986). Thus, whenever
3 "timely relief is sought . . . and the movant has a meritorious
4 defense," a court must resolve any doubt in favor of setting aside
5 the default. Mendoza, 783 F.2d at 945-46. The party seeking to
6 vacate the entry of default bears the burden of demonstrating that
7 these factors favor doing so. TCI, 244 F.3d at 696.

8 Baldassari has demonstrated that she acted diligently in
9 attempting to answer the complaint in the instant case. Plaintiff
10 argues that she did not demonstrate good cause because "the clerk
11 has explained that the only answer received was in response to the
12 Kuman complaint." Opp. at 2. However, Baldassari has attested
13 that she did mail the answer to the Court along with her answer in
14 the related case but that it did not arrive for an unknown reason.

15 In addition, there is no evidence that setting aside
16 Baldassari's default would prejudice Plaintiff, and Baldassari has
17 offered a potentially meritorious defense to Plaintiff's claims
18 against her. Plaintiff alleges in the first amended complaint
19 (1AC) that Defendant The Milan Group, Inc. is the alter ego of
20 Baldassari, that, from August 2010 to August 2011, she conspired
21 with other Defendants to defraud Plaintiff of \$325,000 and that
22 she received part of the money of which Plaintiff was defrauded.
23 In her proposed answer, Baldassari denies Plaintiff's allegations
24 and states that she had no involvement with the Milan Group after
25 December 2009, that she was not involved with, and had no
26 knowledge of, the alleged scheme or the purported conspirators,
27 and that she did not receive any money from it.

28

1 Plaintiff contends that the motion should be denied
2 nonetheless because Baldassari "has not followed the motion
3 procedure required by Local Rule 7-2" and did not "provide any
4 notice of motion or any memorandum of points and authorities."
5 Opp. at 1-2. However, although she did not cite legal authorities
6 in support of her argument, in her motion Baldassari set forth a
7 statement of the relevant facts and provided sufficient grounds
8 for the relief requested. Further, although Baldassari failed to
9 notice the motion for hearing, the Clerk scheduled a hearing date
10 for the motion in accordance with the Court's prior order setting
11 a date. See Docket Nos. 108, 115. In this instance, the Court
12 exercises its discretion to excuse Baldassari's failure to comply
13 with the local rules. See Allen v. United States Fidelity &
14 Guaranty Co., 342 F.2d 951, 954 (9th Cir. 1965); Phoenix Global
15 Ventures, LLC v. Phoenix Hotel Assocs., Ltd., 422 F.3d 72, 76 (2d
16 Cir. 2005); Nvidia Corp. v. United States Bankr. Court, 2006 U.S.
17 Dist. LEXIS 94417, at *13-14 (N.D. Cal.).³

18 CONCLUSION

19 For the reasons set forth above, the Court GRANTS
20 Baldassari's motion to set aside the default entered against her
21 (Docket No. 111). The Clerk of the Court is directed to set aside
22 _____

23 ³ Although the Court excuses the violation of the Civil Local
24 Rules in this instance, the pro se parties in this action are
25 reminded that they are required to follow the Federal Rules and
all applicable local rules. See Civil Local Rule 3-9(a).

26 The Court has several resources to provide information for
27 individuals who are representing themselves in civil cases in this
28 district, which can be accessed at
<http://www.cand.uscourts.gov/proselitigants>. These resources
include a handbook for pro se litigants, which can be downloaded
at <http://www.cand.uscourts.gov/prosehandbook>.

1 the default of Baldassari. The Court deems filed Baldassari's
2 proposed answer as of the date of this Order (Docket No. 112).

3 The Court maintains the case management conference currently
4 set for Wednesday, January 23, 2013, at 2:00 p.m.

5 IT IS SO ORDERED.

6
7 Dated: 1/16/2013


CLAUDIA WILKEN
United States District Judge